

Supreme Court, U.S.
FILED

05-473 SEP 12 2005

Number: _____ **OFFICE OF THE CLERK**

IN THE

Supreme Court of the United States

MOHAMMED HUSEIN BHADELIA

Petitioner

vs.

MARINA CLUB OF TAMPA.

HOMEOWNER'S ASSOCIATION, INC.

Respondents

**Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit
Court of Appeals Number: 05-11292-II**

PETITION FOR A WRIT OF CERTIORARI

**Mohammed Husein Bhadelia, Pro se
Karachi, Pakistan
(813)933-7848
Petitioner**

QUESTIONS PRESENTED

Whether the Orders issued by the United States District Court between August 23, 2004 (specifically on December 22, 2004) and February 24, 2005 had effectively stripped the District Court of Jurisdiction to enforce a Mediation Settlement Agreement which had not been entered by the District Court prior to the February 24, 2005 Evidentiary Hearing when the District Court on December 22, 2004 Specifically Ordered Continued Negotiations?

And, Did the United States Court of Appeals for the Eleventh Circuit err in that Unpublished Opinion which stated that the Mediation Hearing had successfully resolved all remaining issues on appeal without addressing the jurisdictional question presented within petitioner's appeal when the District Court had issued an Order on December 22, 2004 that the parties would meet face to face to resolve their differences and if the parties failed that the District Court would have "No Alternative But to Reopen the Case and Set for Immediate Trial"?

Did United States Court of Appeals for the 11th Circuit decide in opposition to all of the previous rulings of this Supreme Court since 1884 which have ruled under Article III that a Federal Court is required to act on it's own initiative and insure that proper jurisdiction exists.

The central question presented to this Supreme Court today is to clarify Jurisdiction of Court Ordered and Mandated Mediation? Mediation is an out of Court approved method of settling litigation. But, when the

agreement reached at a mediation conference is reneged or when negotiations continue past the original proposed agreement then the litigation has not received a final settlement. When the District Court on December 22, 2004 ordered continued negotiations then it is apparent that the agreement was not final. The District Court had by its own order on December 22, 2004 expressed the Court's knowledge that the mediation process had failed, that the District Court had never entered any agreement as part of any order, and the District Court would have no alternative but to "Reopen the Case and Set for Immediate Trial on the Merits". Did the Evidentiary Hearing and the Entry of a Final Judgment Incorporating a Reneged and Still Pending Negotiation Agreement violate the Subject Matter Jurisdictional Clause of the United States Constitution, Article III and deny the petitioner of Due Process guaranteed under the 14th Amendment?

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Eleventh Circuit.

The petitioner here and the appellants below are Mohammed Husein Bhadelia and Mohammed Farooq Bhadelia.

The appellees below and the respondents here are the Marina Club of Tampa Homeowner's Association, Inc.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states as follows:

Mohammed Husein Bhadelia is an individual and citizen of Karachi, Pakistan. Mohammed Farooq Bhadelia is an individual and citizen of Tampa, Hillsborough County, Florida.

Marina Club of Tampa Homeowner's Association, Inc. is a Not for Profit corporation established under Florida Statutes 718, consisting of members permitted under those by-laws of said corporation owning condominium units within the Marina Club of Tampa Condominium Complex.

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Judgment****Order of District Court February 7, 2005****Order of District Court December 22, 2004****Order of District Court September 29, 2004****Order of District Court August 27, 2004**

TABLE OF AUTHORITIES

CASES CITED:

<i>Kokkonen v. Guardian Life Ins Co. of America</i> , 511 U.S. 375, 377 (1994)	2
<i>American Disability Ass'n. Inc. v. Chmielarz</i> , 289 F.3d 1315, 1320 (11 th Cir. 2002)	2
<i>Aoude</i> , 892 F.2d at 1118;	5
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<i>In re Minister Papandreou</i> . 139 F.3d 247, 254-55 (D.C. Cir. 1998)	5
<i>Kauffmann v. Moss</i> , 420 F.2d 1270, 1276 (3d Cm.), cent. Denied 400 U.S. 846 (1970);	5
<i>Landis v. North American Co.</i> , 299 U.S. 248, 254 (1936)	5
<i>Link v. Wabash R.R. Co.</i> , 370 U.S. 626, 630-3 1(1962)	4
<i>Mansfield, C. & L.M. Ry. Co. v. Swan</i> . 111 U.S. 379, 382 (1884)).	5
<i>Ruhrgas AG v. Marathon Oil Co.</i> . 526 U.S. 574, 583 (1999)	5
<i>Shea v. Donohoe Const. Co.</i> , 795 F.2d 1071, 1075 (D.C. Cm. 1986);	4
<i>Steel Co. v. Citizens for a Better Environment</i> . 523 U.S. 83, 94- 95 (1998)	5
<i>United States v. Western Electric Co. Inc.</i> . 46 F.3d 1198, 1207 n.7 (D.C. Cir. 1995)	5
<i>United Transport Serv. Employees of America. CIO v. Nat'l Mediation Board</i> . 179 F.2d 446, 454 (D.C. Cir. 1949)	6
<i>Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure: Civil</i> § 1357, at 599 & n.67 (1969)	5

STATUTES/CONGRESSIONAL ACTS:

United States Constitution, Article III,	6
14 th Amendment	5
Local Rule 3.08(b) of the Middle District of Florida	

OPINIONS BELOW

The Eleventh Circuit Court of Appeals issued an Unpublished Opinion on July 27, 2005 with Mandate & Judgment Issuance date of August 31, 2005. A copy of that mandate with opinion is attached as Petitioner's Appendix .

JURISDICTION OF THIS COURT

The United States Court of Appeals for the Eleventh Circuit entered it's Judgment on August 31, 2005. The Supreme Court of the United States has jurisdiction under 28 U.S.C. 1254(1). This petition is timely filed.

PETITION FOR A WRIT OF CERTIORARI

COMES NOW, the petitioner, Mohammed Husein Bhadelia, pro se, in this request for this Writ of Certiorari stating that in all prior proceedings he has been represented by counsel and has prior to filing this petition terminated that representation of counsel, and offers the following facts and questions to this Supreme Court for review:

STATEMENT OF THE CASE

Petitioner on January 7, 1993, purchased from the United States Government, through a foreclosure sale during the Receivership of the Resolution Trust Corporation, a failed Condominium Development Project. Although, if this were a perfect world the petitioner would have immediately stepped forward and inserted a

large amount of money into a project that two prior developers had failed at, such an investment was not a requirement of the petitioner purchasing this property.

Instead, what the petitioner chose to do was concentrate on the sale of those finished units as the market improved and postpone new construction until a market existed. When the petitioner chose the business plan based upon his expertise and experience he was met by a disgruntled group of Condominium Owners who had purchased from prior developers. These disgruntled owners perceived that the petitioner was obligated to fulfill the promises made to them by prior developers. Such was not the case as the Resolution Trust Corporation had foreclosed prior to petitioner being in the picture at all. That act of foreclosure had terminated all of the previous developer's promises. The litigation below has ensued from that difference of opinions between petitioner and respondents.

QUESTIONS AS PRESENTED

Jurisdictional Question:

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375,377 (1994). Only two means exist by which the District Court may exercise jurisdiction to enforce a settlement agreement: (1) "by separate provision (such as a provision 'retaining jurisdiction' over the settlement agreement)" or (2) "by incorporating the terms of the settlement agreement in the order." *Id.* at 381; *American Disability Ass'n. Inc. v. Chmielarz*, 289 F.3d 1315, 1320(1 1st Cir. 2002). The administrative order of dismissal in this case neither contained a retention of jurisdiction to

enforce settlement of the underlying action prior to actual entry of said agreement, nor incorporates or refers to terms of a settlement agreement.

Local Rule 3.08(b) of the Middle District of Florida permits a federal district court to administratively close a case "when notified that a case has been settled." In this case, the mediator advised that mediation was successful. None of the parties took issue with the mediator's representation. Thus, the record unequivocally shows that a settlement had been reached.

Local Rule 3.08(b) provides a vehicle by which a case may be removed from the trial docket after it is settled, even though the settlement documents or "a stipulated form of final order or judgment" may not have been signed by the necessary parties or the Court, respectively. During the time necessary for the parties to gather and submit the desired order or judgment to the Court for entry, jurisdiction continues in the District Court to hear the merits of the action set forth in the pleadings. Situations arise, although infrequently, in which settlement of the action is reneged or is otherwise not consummated, despite the parties' or mediator's notice to the Court that the case has settled. In that event, the Court will then place the case on the next available trial calendar to try the case pled, (*Pt. App. Pages 13 & 14, D.C. Order, par. 3&4*) not to hear argument regarding the enforcement of a settlement once thought to have been reached. Nothing in this record bestows jurisdiction on the District Court to enforce a settlement of the underlying action.

The District Court never reserved jurisdiction for purposes of enforcing a settlement agreement, and never entered an order approving, ratifying, or incorporating the terms of any

settlement. The remedy to enforce a settlement agreement is to file a separate action in state court absent an independent basis for federal jurisdiction.

When on February 7, 2005 the District Court entered that Order which reopened the case and set an evidentiary hearing for February 24, 2005. The Court contradicted that Order issued on Dec. 22, 2004 and did not have jurisdiction to enforce any settlement agreement which had not been entered and had clearly been reneged or otherwise not consummated, despite the parties' or mediator's notice to the Court that the case had settled.

What did occur was that a sanction was ordered which penalized the petitioner for the inability to obtain a visa to travel to the United States by February 24, 2005. Petitioner is not denying that the Court had justification to be perturbed and a right to issue sanctions. What the petitioner is stating is that the Court and the petitioner had relied upon the attorneys. That these attorneys representing both sides, as well as petitioner's own counsel, had failed in their duties to their clients and the Court is a clear fact. But, the parties individually did not fail the Court. Resolution of these issues requires this Court to balance the judicial system's need for an effective tool to discourage and punish misconduct with its need for appropriate restraint in imposing inherent power sanctions. Moreover, because the overriding purpose of the inherent power is "to achieve the orderly and expeditious disposition of cases," Link v. Wabash R.R. Co., 370 U.S. 626, 630-3 1(1962), the use of this power should reflect our judicial system's strong presumption in favor of adjudication's on the merits, see, e.g., Foman v. Davis, 371 U.S. 178, 18 1-82 (1962); Shea v.

Donohoe Const. Co., 795 F.2d 1071, 1075 (D.C. Cm. 1986); Aoude, 892 F.2d at 1118; Kauffmann v. Moss, 420 F.2d 1270, 1276 (3d Cm.), cent. denied, 400 U.S. 846 (1970); Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure: Civil § 1357, at 599 & n.67 (1969)

Petitioners' request of the Supreme Court is grounded in two well-established principles of law. First, every court has "inherent" power to exercise its discretion to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for the litigants." Landis v. North American Co., 299 U.S. 248, 254 (1936); accord United States v. Western Electric Co. Inc., 46 F.3d 1198, 1207 n.7 (D.C. Cir. 1995) ("a trial court has inherent power to control the sequence in which it hears matters on its calendar . . .").

Second, and perhaps more importantly, it has been long established that "the requirement that jurisdiction be established as a threshold matter 'springs from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'" Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94-95 (1998) (emphasis added) (quoting Mansfield, C. & L.M. Ry. Co. v. Swan, 11 U.S. 379, 382 (1884)). The "first and fundamental" question for any court is that of jurisdiction. Steel Co., 523 U.S. at 94 (quoting Great Southern Fire Proof Hotel Co. v. Jones, 177 U.S. 449, 453 (1900)).

Thus, as the Supreme has recognized, "resolving a merits issue while jurisdiction is in doubt 'carries the court beyond the bounds of authorized judicial action'... and violates the principle that 'the first and fundamental question is that of jurisdiction.'" In re Minister Papandreou, 139 F.3d 247, 254-55 (D.C. Cir. 1998) (citations omitted); accord Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583 (1999) ("Article

III generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of the case...").

The Court should not require parties to litigate the merits of a cause of action over which the Court has no jurisdiction. To the contrary, "without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Steel Co., 523 U.S. at 94 (emphases added) (quoting Ex parte McCardle, 74 U.S. 506, 514 (1968)). Where the Court lacks jurisdiction over a cause of action, "a defendant should not be put to the trouble and expense of any further proceeding, and the time of court should not be occupied with any further proceeding...." United Transport Serv. Employees of America, CIO v. Nat'l Mediation Board, 179 F.2d 446,454 (D.C. Cir. 1949).

Appellate Court Error:

When in that Unpublished Opinion entered by the Court of Appeals for the Eleventh Circuit it was declared that the Mediation Agreement resolved all remaining issues, was the Court of Appeals in error?

If, supposing that the petitioner is correct in the jurisdictional question, and the District Court had stripped itself of jurisdiction except for that jurisdiction to reopen the case and set for immediate trial, did the appeals court err by refusing to address the remaining issues presented on appeal?

When petitioner presented his appeal before the Court of Appeals it would first be required that the Appeals Court resolve the jurisdictional question regarding the jurisdiction of the District Court to enter an order "enforcing a

mediation agreement which had not been previously entered by the Court as part of a Final Judgment". The District Court had in effect by previous orders limited itself to strictly an "Order to Reopen the Case and Set for Trial on the Merits". Use of an evidentiary hearing and sanctions to bypass that jurisdictional limitation established by Article III and entering a "Reneged Mediation Agreement" and then retaining and granting itself that jurisdiction to enforce is in violation of Article III, United States Constitution which defines the limit's of the jurisdiction of United States District Courts.

REASON FOR GRANTING PETITION AND CONCLUSION

Upon reopening the case on February 7, 2005, the Court's jurisdiction was limited to placing the case back on the trial docket and proceeding with litigation which would not deny the appellant of due process as required under the United States Constitution, 14th Amendment and as stated within the District Court Order of December 22, 2004.. For the foregoing reasons this petition should be granted.

Respectfully submitted,

/s/
Mohammed Husein Bhadelia
Mohammed Farooq Bhadelia
P.O. Box 290007
Tampa, Florida 33687-0007
(813)933-7848
Petitioners

PETITIONER'S

APPENDIX

Opinions and Orders of Lower Courts

Mandate of Court of Appeals

Final Judgment of District Court

**Mediation Agreement as incorporated into Final
Judgment**

Order of District Court February 7, 2005

Order of District Court December 22, 2004

Order of District Court September 29, 2004

Order of District Court August 27, 2004

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 05-11292
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JULY 27, 2005
THOMAS K. KAHN CLERK

D.C. Docket No. 03-01189-CV-T-26TGW

MOHAMMED HUSEIN BHADELIA, an individual and citizen of Karachi Pakistan, MOHAMMED FAROOQ BHADELIA, an individual and citizen of the U.S.A.,

Plaintiffs-Counter-Defendants-Appellants,

versus

MARINA CLUB OF TAMPA, HOMEOWNERS ASSOCIATION, INC., A Florida (F.S. Chapter 720) corporation,

Defendant-Counter-Claimant-Appellee.

Appeal from the United States District Court for the
Middle District of Florida

(July 27, 2005)

Before TJOFLAT, DUBINA and HULL, Circuit Judges.

PER CURIAM:

Plaintiffs Mohammed Husein Bhadelia and

Mohammed Farooq Bhadelia, who are brothers, appeal the district court's enforcement of a settlement agreement between them and defendant Marina Club of Tampa, Homeowners Association, Inc. ("Marina Club"). After review, we affirm.

L BACKGROUND

A. The Dispute

Husein Bhadelia is a citizen and resident of Pakistan. His brother, Farooq Bhadelia is a citizen of the United States of America.

In 1993, Husein Bhadelia purchased three condominium buildings in Tampa, Florida. Two of the condominium buildings were complete, but the third was merely an open shell and construction site. After Husein Bhadelia purchased the buildings, his brother, Farooq Bhadelia, acted as Husein Bhadelia's agent and sold most of the remaining units in the two completed buildings. However, the Bhadelias allowed the third building to remain an open shell and construction site.

The condominium unit owners in the two other buildings were upset with the appearance of the unfinished building and the effect it was having on property values. For the next ten years, the Bhadelias and the Marina Club, which served as the homeowners association for the condominium unit owners, periodically engaged in disputes over the unfinished building.

On August 1, 2003, the Bhadelias filed an amended complaint against Marina Club alleging that the Marina Club: (1) retaliated against them in violation of the Americans with Disabilities Act and the Federal Fair Housing Act; (2) discriminated against them after the September 11, 2001 attacks; (3) improperly placed liens on the Bhadelias' property; and (4) fraudulently represented that it had authority to manage the common areas of the condominium complex.¹

The Marina Club filed a counterclaim seeking: (1) title to all common areas and amenities; (2) title to the

unfinished building and all other non-developed land; and (3) an injunction preventing the Bhadelias from maintaining a nuisance.

B. The Settlement

On July 7, 2004, the district court referred the parties to court-ordered mediation. Husein Bhadelia did not attend the settlement conference, but his brother, Farooq Bhadelia, and the Bhadelias' attorney did. The Bhadelias' attorney at the mediation was the same attorney who filed the amended complaint.

After more than eleven hours of mediation, Farooq Bhadelia and Marina Club reached a settlement. The settlement agreement is signed by Farooq Bhadelia on behalf of Husein Bhadelia. According to the terms of the settlement, Husein Bhadelia would retain title to the unfinished building, but was subject to certain deadlines for the completion of the unfinished building, and Marina Club would pay \$675,000 for title to the amenities, common areas, and two additional parcels of land.

After the parties reached the above settlement, Husein Bhadelia rejected the settlement and claimed that his brother, Farooq Bhadelia, acted outside the scope of his authority in entering into the settlement. Unable to get the Bhadelias to comply with the terms of the settlement, the Marina Club filed a motion to enforce the settlement agreement in federal district court. C. Hearing Before the District Court

The district court conducted an evidentiary hearing into whether Farooq Bhadelia had the authority to enter into the settlement agreement on behalf of Husein Bhadelia. As with the settlement conference, Husein Bhadelia did not attend the evidentiary hearing.

At the evidentiary hearing, the mediator testified that he "was told that everybody was represented [at the settlement conference] that could bind the parties to an agreement." Furthermore, Farooq Bhadelia testified that he acted as his brother's agent in selling units in the two

completed condominium buildings. Farooq Bhadelia also stated that he acted with his brother's authority when filing the lawsuit against the Marina Club and when beginning the settlement negotiations. Finally, the Bhadelias' attorney testified that "in the past 15 years of representing Mr. [Farooq] Bhadelia, I had never known him to need specific authority from his brother [Husein Bhadelia] to do anything he was doing on behalf of his brother."

At the conclusion of the evidentiary hearing, the district court determined that Farooq Bhadelia acted within the scope of his authority as Husein Bhadelia's agent. Consequently, the district court granted the Marina Club's motion to enforce the settlement agreement. The Bhadelias appeal.

II. DISCUSSION

We review a district court's decision to enforce a settlement agreement for an abuse of discretion. Haves v. Nat'l Serv. Indus., 196 F.3d 1252, 1254 (11th Cir. 1999). Furthermore, we look to state law when determining whether an agent had authority to enter into a settlement agreement. *Id.* In Florida, a principal is liable for the acts of its agent under both express and apparent authority. Stiles v. Gordon Land Co., 44 So.2d 417, 421 (Fla. 1950). "By apparent authority is meant, such authority as the principal wrongfully permits the agent to assume or which the principal by his actions or words holds the agent out as possessing." *Id.*

In this case, there is no dispute that Husein Bhadelia authorized Farooq Bhadelia to bring the initial suit against the Marina Club. Furthermore, Farooq Bhadelia acted as Husein Bhadelia's agent in selling condominium units from the finished buildings. Finally, both Farooq Bhadelia and the Bhadelias' attorney testified that Farooq Bhadelia had the authority to enter into settlement negotiations. Given these circumstances,

the district court did not err in concluding that Farooq Bhadelia had the authority to settle the lawsuit on Husein Bhadelia's behalf, and, thus, the district court did not abuse its discretion when enforcing the settlement.²

AFFIRMED.

1. The Bhadelias filed an initial two-count complaint on June 6, 2003. We address the amended complaint because it contains the claims that went to mediation.
2. The Bhadelias' remaining issues on appeal, such as the district court's initial denial of their motion to dismiss the Marina Club's counterclaim before sending the case to settlement, are without merit and not discussed further. The settlement agreement resolved the entire case.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JULY 27, 2005
THOMAS K. KAHN CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
MOHAMMED HUSEIN BHADELIA, et al,
Plaintiffs,

v.

CASE NO: 8:03-cv-1189-T-26TGW

MARINA CLUB OF TAMPA HOMEOWNERS
ASSOCIATION, INC., et al.,
Defendants.

FINAL JUDGMENT

UPON DUE CONSIDERATION of the parties' written submissions, evidence and testimony, and oral arguments, and for the reasons announced on the record at the evidentiary hearing held in this case this day, it is ORDERED AND ADJUDGED as follows:

- 1) Defendant's oral Motion to Enforcement Settlement Agreement is granted.
- 2) The terms of the written mediated Settlement Agreement introduced into evidence by Defendant as Exhibit 1 is incorporated herein by reference and final judgment on each count of Plaintiffs' complaint and on each count of Defendant's counterclaim is hereby entered in accordance with its terms.
- 3) To the extent the Plaintiffs sought relief not granted by the Mediated Settlement Agreement, Plaintiffs shall recover nothing by their action and Defendant shall go hence without day.
- 4) To the extent the Defendant sought relief not granted by the Mediated Settlement Agreement, Defendant shall recover nothing by their action and Plaintiffs shall go hence without day.
- 5) Title to Plaintiff, Mohammed Husein Bhadelia's Property described on Exhibit "A" to the Mediated Settlement Agreement which was conveyed to

him by the Resolution Trust Corporation by that certain Special Warranty Deed recorded at O.R. Book 6850, Page 1705 of the Public Records of Hillsborough County, Florida, less and except Building 'N' and the five (5) foot perimeter surrounding the imprint of said Building 'N' and Units LI 06 and A112 is hereby quieted in the name of the Defendant, Marina Club of Tampa Homeowners' Association, Inc.

6) This Court retains jurisdiction to enforce the terms of the Mediated Settlement Agreement and this Final Judgment and to add a corrected legal description, if necessary, following the completion of a survey of the Property and an examination of its title.

7) The Clerk is directed to close the file.

DONE AND ORDERED
at Tampa, Florida, on February 24, 2005.

BY THE COURT:

/S/ Richard A. Lazzara
Richard A. Lazzara
United States District Judge

COPIES FURNISHED TO:

Counsel of Record
Any *pro se* parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
MOHAMMED HUSEIN BHADELIA, et Al
Plaintiffs, CASE
NO.: 8:03-cv- 1189-T-26TGW
vs.

MARINA CLUB OF TAMPA HOMEOWNERS.
ASSOCIATION, INC., et al.,

Defendants.

Settlement Agreement

I. In this settlement agreement the CRE's shall refer to that certain First Amendment and First Supplemental Declaration of Covenants, Restrictions and Easements for The Marina Club of Tampa recorded at O.R. Book 4239 Page 484, of the Public Records of Hillsborough County.

II. Building "N" - Title to Building "N"

A. Defendants will stipulate to the entry of a Judgment quieting title to Building N/ and the five foot perimeter surrounding (the 'building N property') as depicted in the attached; subject however to the following conditions:

B. Time restraints

1. Plaintiffs shall apply for a building permit for completion of the dwelling units in Building N within 120 days.

2. Building N construction must be completed and certificates of occupancy issued for all dwelling units in Building N within 2 years of issuance of the building permit.

3. The Plaintiffs must obtain a building permit for the completion of Building N within 2 years of application.

4. Failure to meet the above time frames, except for force majeure, shall result in the HOA having a lien on the Building N property in the amount of \$1,000 per day.

C. The Units in Building N shall be offered for sale and shall not be held by Plaintiffs as rental units.

D. The building N property shall be deemed to be encumbered by the CRE's and, thereby, all owners of dwelling units in Building N shall be members of the HOA.

E. Building N property shall be submitted to a declaration of condominium.

F. HOA assessments on each dwelling units in Building N will be assessed upon the sale of the dwelling unit by the Plaintiffs. No votes in the HOA shall inure to the dwelling units in Building N until sold by the Plaintiffs.

III. Payment and Conveyance

A. Defendant shall pay the Plaintiffs \$675,000 within 120 days of the date of the Order pursuant to this settlement is entered by the Judge.

B. Plaintiffs shall convey to Defendant, free and clear of any liens and encumbrances what so ever, all of the *property* now owned by the Plaintiffs which was conveyed by that certain Special Warranty Deed recorded at O.K. Book 6850, Page 1705 of the Public Records of Hillsborough County Florida, save the Building N Property and units L106 and A 112. The CRE's shall not

be considered an encumbrance as that term is used in this paragraph.

C. Plaintiffs will stipulate to the entry of a Judgment quieting title in the defendants to the property conveyed.

IV. Approval of Settlement by Board of Directors of Defendant

A. Within 21 days of the execution hereof the Defendant shall schedule and hold a meeting of its Board of Directors to approve this settlement and the necessary financing to fund the settlement. This settlement is conditioned upon the approval by the Board of Directors of Defendants within said 21 days and obtaining the necessary financing 120 days.

V. Confidentiality Clause

A. The Plaintiffs shall keep the terms of this settlement confidential until the date on which the Order is entered pursuant to this settlement.

Approved by:

/s/ Mohammed Husein Bhadelia signed by Farooq Bhadelia

Mohammed Husein Bhadelia by Mohammed Farooq Bhadelia

/s/ Patricia J. Mira

Marina Club of Tampa Homeowner's Association,
Inc. et. al.

/s/ Guy O. Spicola

Mediator Hon. Guy Spicola
August 23, 2004

Date:

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MOHAMMED HUSEIN BHADELIA, et al,

Plaintiffs,

v.

CASE NO: 8:03-cv-1189-

T-26TGW

MARINA CLUB OF TAMPA HOMEOWNERS
ASSOCIATION, INC., et al.,

Defendants.

ORDER

Before the Court is Defendant's motion seeking relief from this Court's order of December 22, 2004, extending the time within which the parties could present the Court with stipulated form of final judgment in accord with then: mediated settlement agreement, as well other relief. Upon due consideration, it is ordered and adjudged as follows:

1) The Motion for Relief (Dkt. 42) is granted.²

2) The Clerk is directed to reopen this case.

3) The Defendant's Request for Evidentiary Hearing (Dkt. 42) is granted. The Court will conduct an evidentiary hearing to determine whether the mediated settlement agreement should be enforced on Thursday, February 24, 2005, at 10:00 a.m., in Courtroom 15B, United States Courthouse, 801 North Florida Avenue, Tampa, Florida. The hearing shall continue for the duration of the day.

4) The Request for Order to Show Cause (Dkt.

42) is granted. Plaintiffs are directed to appear in person at the hearing, failing which this Court will have no other alternative but to draw such inferences as may reasonably be inferred from their absence.

5) Defendant is free to subpoena Donice Alien to ensure her attendance at the hearing.

6) Defendant's Motion to Enforce Mediation Agreement (Dkt. 42) is denied without prejudice to being renewed at the conclusion of the evidentiary hearing.

7) Defendant's Request for Sanctions (Dkt. 42) is denied without prejudice to being renewed at the conclusion of the evidentiary hearing.

8) Plaintiffs shall file a response to that aspect of Defendant's motion seeking enforcement of the mediated settlement agreement on or before February 21, 2005.

DONE AND ORDERED at Tampa, Florida, on
February 7, 2005.

/s/ Richard A. Lazzara
RICHARD A LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO,
Counsel of Record

¹ The Court entered this order hoping that a further extension of time would result in the parties finally resolving this case without court intervention and without the need to expend additional client and judicial resources. Obviously, the Court's hopes were dashed as evidenced by Defendant's motion.

² Because the Court clearly stated in its order of December 22, 2004, that the Court would have no alternative but to reopen this case if the parties did not present the Court with a stipulated final judgment, the Court needs no response from Plaintiffs.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MOHAMMED HUSEIN BHADELIA, et al.,
Plaintiff(s),

v. CASE NO: 8:03-cv-
1189-T-26TGW

MARINA CLUB OF TAMPA, HOA, et al.,
Defendant(s).

ORDER

The Court is confronted by a Motion to Enforce Settlement Agreement filed by the Defendant Marina Club of Tampa Homeowners Association, Inc., in which the Court is asked to enter a proposed final judgment. As is obvious from the motion, however, the proposed final judgment is not a "stipulated form of final order or judgment" as required by this Court's order of August 27, 2004.

ACCORDINGLY, it is ORDERED AND ADJUDGED as follows:

- 1) The Motion to Enforce Settlement Agreement (Dkt. 39) is denied.
- 2) The Court once again amends its order of August 27, 2004, to provide that the parties shall have until February 4, 2005, within which to present a *stipulated* final judgment over which the Court will retain jurisdiction.

3) Counsel for the parties and, if necessary, the parties themselves or their representatives, shall engage in *& face-to-face* conference within 15 days of the date of the entry of this order at which they shall attempt in good faith to agree to a stipulated final judgment.

4) In the event the parties are unable to agree on a stipulated final judgment, the Court will have no other alternative but to reopen this case and schedule it for an immediate trial on the merits.

DONE AND ORDERED at Tampa, Florida, on December 23,2004.

/s/

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MOHAMMED HUSEIN BHADELIA, et al.,
Plaintiffs),

v.

CASE NO: 8:03-cv-1189-T-26TGW
MARINA CLUB OF TAMPA, HGA, et al.,
Defendant(s).

ORDER

UPON DUE CONSIDERATION, it is
ORDERED AND ADJUDGED that Defendant Marina
Club of Tampa's Motion to Reopen (Dkt. 35) is denied
without prejudice. The Court will, however, amend
the order of August 27, 2004, to provide that the
parties shall have until January 3, 2005, within which
to present the Court with a stipulated final judgment
over which the Court will retain jurisdiction.

DONE AND ORDERED at Tampa, Florida, on
September 29, 2004.

/S/

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
MOHAMMED HUSEIN BHADELIA, et al.,
Plaintiff(s).

v.

CASE NO: 8:03-cv-1 189-T-26TGW
MARINA CLUB OF TAMPA, HGA, et al.,
Defendant(s).

ORDER

The Court has been advised by the Mediator that the above-styled action has been settled. Accordingly, pursuant to Local Rule 3.08(b), M.D.Fla., it is

ORDERED AND ADJUDGED that this cause is hereby DISMISSED without prejudice and subject to the right of the parties, within sixty (60) days of the date of this order, to submit a stipulated form of final order or judgment should they so choose or for any party to move to reopen the action, *upon good cause shown*.

After that 60-day period, however, dismissal shall be with prejudice. All pending motions, if any, are DENIED as moot. The Clerk is directed to close the file.

DONE AND ORDERED at Tampa, Florida, on August 27, 2004.

/S/

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record



No. 05-473

Supreme Court, U.S.
FILED

NOV 14 2005

OFFICE OF THE CLERK

In The

Supreme Court of the United States**MOHAMMED HUSEIN BHADELIA,***Petitioner,*

vs.

**MARINA CLUB OF TAMPA
HOMEOWNERS' ASSOCIATION, INC.,***Respondents.***On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit****RESPONSE TO PETITION
FOR WRIT OF CERTIORARI**

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Homeowners Association, Inc.

BEST AVAILABLE COPY

CORPORATE DISCLOSURE

Respondents are Marina Club of Tampa Homeowners' Association, Inc. There are no parent corporations or publicly held companies owning 10% or more of petitioner's stock.

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STATEMENT OF THE CASE

The Court of Appeals for the Eleventh Circuit accurately stated the pertinent, undisputed facts related to Bhadelia's claims. [Pet., App. 1-4]. Briefly stated, Mohammed Husein Bhadelia ("Bhadelia") sued Marina Club of Tampa Homeowners' Association, Inc. ("Marina Club") alleging that it: (1) retaliated against him in violation of the Americans with Disabilities Act and the Federal Fair Housing Act; (2) discriminated against him after the September 11, 2001 attacks; (3) improperly placed liens on his property; and (4) fraudulently represented that it had authority to manage the common areas of the condominium complex. Marina Club filed a counterclaim seeking (1) title to all common areas and amenities; (2) title to the unfinished building and all other non-developed land; and (3) an injunction preventing Bhadelia from maintaining a nuisance.

The parties settled their claims at a court ordered mediation. Bhadelia subsequently repudiated the settlement agreement. Marina Club thereafter moved to reopen the case and to enforce the settlement agreement before the deadline in the district court's administrative order of dismissal. The district court granted Marina Club's motion and reopened the case. After an evidentiary hearing, the district court enforced the settlement agreement and entered a form final judgment in accordance with and incorporating the terms of the settlement agreement.

I. CLARIFICATION OF THE RECORD

The facts set forth in the Petitioner's Statement of the Case do not accurately reflect the record. Marina Club is a homeowners association that was created by the original

developer of Marina Club of Tampa Condominiums under Chapter 720 of the Florida Statutes pursuant to the Declaration of Covenants, Restrictions and Easements (the "Declaration") recorded in the public records of Hillsborough County, Florida. According to the Declaration, Marina Club was incorporated to own and manage the Marina Club of Tampa Condominiums' common areas and amenities which were to be deeded by the original developer to Marina Club. The original developer's lender who financed the condominiums' conversion and development agreed to, joined in, and executed the recorded Declaration.

Unfortunately, the original developer failed and defaulted on its mortgage loan. The lender that financed the project also failed and the Resolution Trust Corporation ("RTC") foreclosed the mortgage that encumbered several unsold units and the shell of a condominium building that had been started in 1989. Marina Club was not named as a party and its interest in the condominium complex was not foreclosed. The RTC did not deed the condominium's common areas and amenities to Marina Club as required by the Declaration. Rather, after a foreclosure sale, the RTC executed a warranty deed conveying all of the mortgaged property including the common areas and amenities to Bhadelia. The condominium's common areas and amenities were included in the legal description of the warranty deed given by the RTC to Bhadelia.

Although Bhadelia quickly sold the unsold condominium units that had been completed by the original developer, as well as the units he subsequently completed, he allowed the building that had only been started to remain a shell. Over the years, the condominium unit owners

complained to Bhadelia and the City of Tampa. As a result of those complaints, the City of Tampa revoked Bhadelia's building permit for the unfinished building and refused to issue a new permit unless he submitted new plans and completed his building in accordance with the current building code instead of the code in effect in 1989 when its construction began. The current building code required Bhadelia to comply with the ADA'S accessibility requirements and to retrofit a sprinkler system inside the building. Bhadelia now has to spend an additional \$1,000,000 to complete his building under the current building code.

Bhadelia attempted to pass his additional costs for completing his building onto the Marina Club. He threatened to withhold use of the common areas, the streets, parking lots, and the amenities from the condominium unit owners unless they paid the cost of making his building and the condominium complex comply with the ADA's accessibility requirements incorporated into the current building code. When Marina Club refused Bhadelia's demands, he sued the Marina Club in the United States District Court for the Middle District of Florida. Marina Club then counterclaimed to quiet title to the common areas and amenities and to enjoin Bhadelia from maintaining a nuisance.

REASONS FOR DENYING THE WRIT

I. BHADELIA HAS NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for

writ of certiorari will be granted only for compelling reasons." *Id.* Bhadelia has not presented a compelling reason to justify this Court's discretionary review of the form final judgment entered by the district court pursuant to a mediation settlement agreement after it held an evidentiary hearing to determine whether the agreement should be enforced.

Citing this Court's ruling in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994), Bhadelia claims that the district court did not have jurisdiction to enforce the mediation settlement agreement because its administrative order of dismissal did not incorporate the terms of the agreement, or retain jurisdiction to enforce it. [Pet., p. 2-3]. Bhadelia's Petition does not accurately and completely describe the content of the district court's orders, and the events that occurred following the court ordered mediation. Moreover, the cases cited by the Petitioner are easily distinguished on the facts of this case where Marina Club moved to reopen the case within the time provided in Local Rule 3.08 and in the district court's administrative order of dismissal.

Unlike *Kokkonen*, the district court did not enter a judgment under its supervisory power after losing jurisdiction following the parties' dismissal of their case with prejudice by stipulation under FED. R. CIV. P. 41. Instead of stating that the case would be dismissed by a stipulation for dismissal, the parties' mediation settlement agreement required the district court to enter a form judgment quieting title in favor of the Marina Club. [Pet., App. 8-10]. Therefore, the parties never signed a stipulation stating that the case should be dismissed. Accordingly, rather than dismissing the case with prejudice, on August 27, 2004, the district court entered an order of dismissal

without prejudice on its own pursuant to Local Rule 3.08 after being advised by the court appointed mediator that the parties had executed a mediation settlement agreement. The district court's order invited the parties to submit a form final judgment or to move the court to reinstate the action upon good cause shown within 60 days of its order. If the parties did not do so, the district court's administrative dismissal would be with prejudice under Local Rule 3.08. [Pet., App. 16].

Before the district court's order became a final order of dismissal with prejudice, Marina Club moved to reopen the case on September 28, 2004. On September 29, 2004, the district court denied Marina Club's motion to reopen the case without prejudice and amended its August 27, 2004 order to give the parties until January 3, 2005 to submit a form final judgment over which the district court would retain jurisdiction. [Pet., App. 15]. Before the January 3, 2005 deadline, on December 22, 2004, Marina Club moved the district court to enforce the settlement agreement reached at mediation and to enter the judgment that it had submitted to the court. The district court entered an order that denied Marina Club's motion to enforce the mediation settlement agreement on December 22, 2004. In its order, the district court again amended its August 27, 2004 administrative order of dismissal to give the parties until February 4, 2005 to present a stipulated final judgment over which the court would retain jurisdiction. The district court's order warned the parties that if a stipulated final judgment was not presented by February 4, 2005, it would reopen the case and set it for trial. [Pet., App. 13-14].

At the meeting of the parties held on January 7, 2005 as required by the district court's order of December 22,

2004, Bhadelia's attorneys informed Marina Club that they could not stipulate to a form final judgment because Bhadelia had repudiated the settlement agreement and claimed that his brother, who attended mediation on his behalf, did not have authority to execute the agreement reached at mediation. Consequently, Marina Club moved the district court on February 4, 2005 for relief from its order of December 22, 2004, for entry of an order to show cause, for an evidentiary hearing and to compel settlement in accordance with the terms of the mediation settlement agreement. The district court then entered an order granting Marina Club's motion for relief, reopening the case, ordering Bhadelia to show cause and scheduling an evidentiary hearing to be held on February 24, 2005 to determine whether it should enforce the mediation settlement agreement. [Pet., App. 11-12].

Clearly, the district court never lost jurisdiction to conduct an evidentiary hearing and to enforce the settlement agreement under the circumstances of this case and the controlling law. Local Rule 3.08(b) of the Middle District of Florida provides: "When notified that a case has been settled and for purposes of administratively closing the file, the Court may order that a case be dismissed subject to the right of any party to move the Court within sixty (60) days thereafter (or within such other period of time as the Court may specify) for purposes of entering a stipulated form of final order or judgment; or, on good cause shown, to reopen the case for further proceedings." Local Rule 3.08. [Res., App. p.1]. The district court's August 27, 2004 order administratively dismissing the case entered in accordance with Local Rule 3.08 specifically gave the parties sixty days to present the court with a stipulated final judgment or move to reopen the case. Before the sixty day

deadline expired, Marina Club filed its then unopposed motion with the district court to reopen the case. Although the district court denied that motion without prejudice, it twice extended the sixty day deadline as authorized by Local Rule 3.08 by amending its August 27, 2004 administrative order of dismissal. Therefore, the instant case was never dismissed with prejudice and was properly reopened by the district court's order of February 7, 2005 after the district court ruled that Marina Club had shown good cause to reopen the case.

Bhadelia's claim in his Petition that the district court only had jurisdiction to reopen the instant case solely for the purpose of conducting an immediate trial has no merit and makes no sense. [Pet., p.7]. In its order of December 22, 2004, the district court stated that if the parties could not agree on a stipulated final judgment, it would have no choice but to reopen the case and set it for an immediate trial. There is no provision in Local Rule 3.08 which limits reopening the case to conducting a trial. Rather, Local Rule 3.08 provides that upon a showing of good cause, the case will be reopened for further proceedings. [Res., App. p.1]. "Reopened for further proceedings" certainly includes conducting an evidentiary hearing.

In footnote 1 to its February 7, 2005 order granting Marina Club relief from the December 22, 2004 order, the district court explained that it had hoped to avoid the need to expend further client and judicial resources by threatening the parties in its December 22, 2004 order with an immediate trial if the stipulated form final judgment was not presented to the court by its deadline. The district court had hoped to avoid the evidentiary hearing required by case law to determine whether the parties had reached an enforceable settlement agreement. *Murchison v. Grand*

Cypress Hotel Corporation, 13 F.3d 1483, 1486 (11th Cir. 1994). However, at the time that the district court entered its order, both the court and Marina Club were unaware that the mediation settlement agreement had been repudiated by Bhadelia because his counsel had not yet disclosed Bhadelia's change of mind. Upon learning that the mediation settlement agreement had been repudiated and that Bhadelia's counsel were refusing to agree to submit the form final judgment contemplated in and required by the mediation settlement agreement, the district court granted Marina Club's motion for relief from the court's order, it reopened the case and set an evidentiary hearing as required by the controlling case law to determine whether an enforceable settlement agreement had been executed. [Pet., App. 11-12].

Bhadelia claims in his Petition that he has been wrongfully sanctioned because of his inability to obtain a visa to travel to the United States in time for the February 24, 2005 evidentiary hearing. [Pet., p.4]. There is absolutely no evidence in the record that Bhadelia even attempted to obtain a visa to attend the evidentiary hearing. Moreover, there is absolutely nothing in the record that indicates that Bhadelia even asked the court for a continuance based upon his "alleged" inability to obtain a visa in time for the hearing. However, in response to the district court's question to Bhadelia's brother as to what would happen if the court scheduled an immediate trial and required Bhadelia to attend, his brother testified that Bhadelia could travel to Singapore and easily obtain a visa from there to the United States. [Res., App., p.2-4]. The case management order entered in this action by the district court on October 20, 2003 placed this action on the November, 2004 trial docket. Therefore, Bhadelia had more

than one year to apply for and obtain a visa to travel to this country. Bhadelia cannot claim that he was deprived of a jury trial when he made no effort to obtain a visa to come to this country to attend his trial and evidentiary hearings.

Contrary to Bhadelia's arguments, he was not denied due process nor was he penalized by his "alleged" inability to travel to this country. The district court gave Bhadelia an opportunity to be heard and to present evidence and legal arguments at an evidentiary hearing after his agent settled the instant case at mediation. The record established that Bhadelia only acted through his agents whom he authorized to conduct his business affairs. After his authorized agent agreed to settle the instant case at a court ordered mediation, Bhadelia repudiated the settlement, but made no effort to come to this country and appear before the district court in accordance with its order. Although Bhadelia invoked the jurisdiction of the district court, he refused to comply with its rules and orders. Bhadelia was not denied due process; rather, he chose not to exercise his right to appear before the district court.

II. THE LOWER COURTS DID NOT ERR IN DECIDING THIS CASE

The district court properly retained jurisdiction and reopened this case upon Marina Club's timely motions as demonstrated by the record. However, even though the district court's August 27, 2004 administrative order of dismissal did not incorporate the mediation settlement agreement, there is an independent basis for federal jurisdiction in the instant case. If there is an independent

basis for federal court jurisdiction, a federal court may enforce a settlement agreement even after the case has been dismissed. *Kokkonen*, *Id.* at 382. Bhadelia is a citizen of Pakistan and Marina Club is a Florida corporation whose office and headquarters are located in Tampa, Florida. Because the amount in controversy exceeded \$75,000, the district court had diversity jurisdiction to enforce the settlement agreement under 28 U.S.C. § 1332(a).

Although Bhadelia's brother, Mohammed Farooq Bhadelia, a resident of Florida, was joined as a co-plaintiff, his joinder does not defeat diversity jurisdiction. Mohammed Farooq Bhadelia was not the real party in interest in this action. He did not purchase the condominium property from the RTC, nor did he subsequently acquire an ownership interest. Rather, the property was continuously owned by the real party in interest, Bhadelia and Mohammed Farooq Bhadelia was nothing more than his brother's agent. If a non-diverse plaintiff is not the real party in interest, his presence in the case may be ignored in determining diversity jurisdiction. *Navarro Savings Association v. Lee*, 446 U.S. 458, 461 (1980). Consequently, the district court had an independent basis for federal court jurisdiction under 28 U.S.C. § 1332 to enforce the settlement agreement because the parties were diverse.

CONCLUSION

For all of the foregoing reasons, Respondent, Marina Club respectfully requests that this Honorable Court denies Petitioner Bhadelia's Petition. —

Respectfully submitted,

NEIL C. SPECTOR

Counsel of Record

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Homeowners Association, Inc.

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***THIS DOCUMENT REFLECTS CHANGES
RECEIVED THROUGH OCTOBER 15, 2005***

Annotations current through September 23, 2005

Rules of The United States District Court for The
Middle District of **Florida** Chapter THREE. MOTIONS,
DISCOVERY AND PRETRIAL PROCEEDINGS

USDC M.D. Fla. Local Rule 3.08 (2005)

Review Court Orders which may amend this Rule.

Rule 3.08. Notice of Settlements; Dismissal

- (a) It shall be the duty of all counsel to immediately notify the Court upon the settlement of any case.
- (b) When notified that a case has been settled and for purposes of administratively closing the file, the Court may order that a case be dismissed subject to the right of any party to move the Court within sixty (60) days thereafter (or within such other period of time as the Court may specify) for the purpose of entering a stipulated form of final order or judgment; or, on good cause shown, to reopen the case for further proceedings.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

MOHAMMED HUSEIN BHADELIA, CASE NO:

Plaintiff,

8:03-CV-1189.
T-26MSS

VS.

**MARINA CLUB OF TAMPA,
Homeowners Association, Inc.,**

*Tampa, Florida
February 24, 2005
10:00 a.m.*

Defendants.

**TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

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* * *

[52] of the deal, that's not what I had asked you to do for me.

And that's when - I was - I went to settle the common areas and the lien, but the lien was the main problem, but that if I don't get the lien off, even if I finish the building, I won't be able to sell the building because there's a two, three million dollars lien. I can't get rid of the lien.

THE COURT: *Of course, your brother is not here to tell me all that, is he?*

THE WITNESS: *Yes, sir, no, he is not here.*

THE COURT: When is the last time he was in the United States?

THE WITNESS: '97, '98.

THE COURT: '97, '98 is the last time he was here?

THE WITNESS: Yes, sir, '97, '98.

THE COURT: It's my understanding that it's very difficult for him to return to the United States?

THE WITNESS: Right now, the problem is, if - he had multiple visa that had expired.

THE COURT: I know all that. Let me ask you this. What would he do if I denied this motion and set this for trial on Monday. How would he get here, how would he present his case?

[53] *THE WITNESS: Well, he may have to go to some other country like Singapore or something where it's easy, but if you send this for a visa, if you send it to Pakistan to get the visa, it's not that simple, sir.*

THE COURT: Go ahead, Mr Stanton.

BY MR. STANTON:

Q. Well, the Judge anticipated many of my questions. You indicated that - well, just for clarity, when was it that you realized that you had overstepped your authority?

A. Well, I realized it a couple days later, but at that time, I knew, you know, I messed it up there and I said, you know, I sold the land that was never, you know, I talked to him about it, so then I tried to do something, you know, tried to negotiate it more, tried to see, you know, if I can get

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some better deal with the garage, and they didn't offer it to him because I knew he was going to be annoyed at me for what I done.

Q. Did those negotiations continue?

A. Yes, the negotiations, we tried to see if I can get the garages, you know, put in there, then I can show him we can make a few hundred thousand dollars more with the garages, we'll have more income coming in, and then I can, you know, I can show it to him, that this is what has happened, I messed it up.

— * —

3

Case Number: 05-473

OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

MOHAMMED HUSEIN BHADELIA

Petitioner

vs.

MARINA CLUB OF TAMPA,

HOMEOWNER'S ASSOCIATION, INC.,

Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit
Court of Appeals Number: 05-11292-II

PETITIONER'S REPLY
FOR A WRIT OF CERTIORARI

Mohammed Husein Bhadelia,
Pro se
Karachi, Pakistan
(813)933-7848
Petitioner

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Eleventh Circuit.

The petitioner here and the appellants below are Mohammed Husein Bhadelia and Mohammed Farooq Bhadelia.

The appellees below and the respondents here are the Marina Club of Tampa Homeowner's Association, Inc.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states as follows:

Mohammed Husein Bhadelia is an individual and citizen of Karachi, Pakistan. Mohammed Farooq Bhadelia is an individual and citizen of Tampa, Hillsborough County, Florida.

Marina Club of Tampa Homeowner's Association Inc. is a Not for Profit corporation established under Florida Statutes 718, consisting of members permitted under those by-laws of said corporation owning condominium units within the Marina Club of Tampa Condominium Complex.

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STATEMENT OF THE CASE

Respondent has made a misleading description of the litigation history which requires that the Petitioner at this time furnish a more detailed account of the litigation history which involves the parties.

FACTUAL AND PROCEDURAL BACKGROUND

1. Statement of Prior Proceedings

(A.) This litigation between respondent and petitioners began in January of 2002, Marina Club brought suit in the court of Hillsborough County, Florida seeking only an injunction to prevent a "Service Dog" from Marina Club as a violation of the "Pet Weight Limit". At that time the defendants named in that action were Petitioner as the Owner of the condominium unit and Dwayne Gillispie as occupant and owner of the dog. Petitioner was served a summons in that action but did not file a reply.

On March 25, 2002, Gillispie filed a complaint in the United States District Court under the ADA and FHAA in which the state action was the violation complained of.

Petitioners did support and assist Gillispie in the filing of that Federal Complaint. In a meeting with Respondent's Board members, Farooq Bhadelia did voice his support of Gillispie and requested on the behalf of Gillispie that Respondent accommodate the service dog.

In retaliation of that support by Petitioners, the Respondent did on June 7, 2002 amend that state action to include this immediate demand for Petitioner's land.

When Petitioners filed this immediate action in this District Court under the ADA and FHAA, there was held on October 8, 2003 a mediation hearing on that litigation filed by Gillispie. The very next week, in this immediate litigation, Respondent filed a

Counter Claim against both Petitioners with an exact claim as their amended state action without dismissing that previously served action in state court or requesting a proper removal of those claims to Federal Court.

This Counter claim is in direct violation of that Court Order issued August 31, 1991 in that case of RTC v. Riverwalk Investments with attorneys for Marina Club having full and complete prior knowledge that said counter claim would be in violation of a Federal Court Order.

(B) RESOLUTION TRUST CORPORATION

On August 30, 1990, RTC filed its Complaint in an action seeking to foreclose on a mortgage secured by real property situated in Hillsborough County, Florida as receiver under FIRRA.

As shown below, a mortgage proven of record and recorded according to law is presumed validly executed on the date recited in the mortgage. The affidavit of Mr. Brian H. McClelland, RTC's representative, which was filed in that foreclosure action, affirmatively establishes the making, validity, and date of recording of the subject note and mortgage, Riverwalk's default thereunder, and RTC's acceleration of the principal balance of the subject note. As evidenced in Mr. McClelland's affidavit, RTC, as Conservator, was owed by defendant Riverwalk the sum of \$8,875,092.00

2. Statement of Material Facts Relating to RTC

On November 1, 1982, Riverwalk Corporation, a Florida corporation, doing business as a general partner of Riviera Associates, Ltd., a Florida limited partnership and general partner of Riverwalk, Ltd., a Florida limited partnership, made, executed and delivered a Promissory Note (the "Note"), in the principal sum of \$9,200,000.00 and a Multifamily Mortgage, Assignment of Rents, and

(the "Mortgage Agreement"), to City Federal. The Mortgage Agreement was recorded on November 2, 1982, in Official Records Book 4020 at page 125 of the Public Records of Hillsborough County, Florida, and encumbered the real property described therein (the "Encumbered Property"), then owned by and in possession of Riverwalk, Ltd.

On September 23, 1985, the Encumbered Property was conveyed from Riverwalk, Ltd. to Riverwalk Investments, Inc. Pursuant to the Fee Simple Deed executed by Riverwalk Corporation, as general partner of Riviera Associates a general partner of Riverwalk, Ltd., The Encumbered Property was conveyed subject to the Note and Mortgage identified above.

By Order No. 89-460, dated December 7, 1989, the Director of the Office of Thrift Supervision, Department of the Treasury ("OTS"), declared City Federal insolvent and appointed the RTC as Receiver for City Federal. Thereafter, the RTC, as Receiver took possession of City Federal and succeeded to all the rights, titles, powers and privileges of City Federal. On December 8, 1989, the RTC, as Receiver sold, assigned, transferred, conveyed and delivered to City Savings Bank, a newly federally chartered mutual savings association, without recourse, the right, title, and interest of the Receiver in and to certain assets, including the note and mortgage the subject of this action. By OTS Order No. 89-462, dated December 7, 1989, the RTC was appointed as Conservator for City Savings Bank and thereafter took possession and charge of the bank.

By OTS Order No. 90-1763, dated September 21, 1990, the RTC, as Conservator was replaced by the RTC, as Receiver for City Savings Bank, which took possession of City Savings Bank and succeeded to all the rights, titles, powers and privileges of City Savings Bank. On September 21, 1990, the RTC, as Receiver sold, assigned,

transferred, conveyed and delivered to City Savings, a newly federally chartered mutual savings association, all the Receiver's interest in and to certain assets of City Savings Bank, including the note and mortgage the subject of this action. By OTS Order No. 90-1766, dated September 21, 1990, the RTC was appointed as Conservator for City Savings and thereafter took possession and charge of City Savings.

There was due and owing to RTC the sum of \$8,875,092.00 that was due as principal on the Note and Mortgage, together with accrued interest, late charges, title search expenses for ascertaining the necessary parties to this action, attorneys' fees and costs, all as set forth in the affidavits filed with RTC's motion for summary judgment.

3. History of Marina Club

Riverwalk Corporation did on December 19, 1983, record a Declaration of Covenants, Easements, and Restrictions between Riverwalk Corporation (the Developer/Declarant) and those future purchasers of condominium units within the Marina Club of Tampa Condominium (Bldgs. A-I). That recorded declaration was subject to that mortgage and required by that mortgage to be recorded no later than December 31, 1983.

In those documents establishing **Marina Club of Tampa Condominium (Buildings A-I)** was included a proposed development site plan and a provision which permitted the developer to withdraw or add land, buildings, and recreational amenities with a recording of proper documents with the clerk of court.

In that properly recorded Condominium Plat there is described both an actual recording of that land which is the common area for **Marina Club of Tampa Condominium (A-I)** and a proposed site plan indicating the developer's intent on that date to convey additional lands but subject to actual changes in the site plan.

The intent of the developer did change and in 1985 the original Phase Condominium was abandoned and replaced by a Multi-Condominium development plan.

On August 30, 1990 when RTC filed it's complaint for foreclosure, only Marina Club of Tampa Condominium (Buildings A-I) and Marina Club of Tampa Building M Condominium had a recorded Condominium Plat recorded with the Clerk of Court.

Never at any time between November 1, 1982 and August 30, 1990 had any Condominium Plat recording which would designate any lands other than those condominium plats of Marina Club of Tampa Condominium (A-I) and Marina Club of Tampa Building M Condominium been recorded by the developer as required by Florida Statutes and those Documents creating Marina Club of Tampa Condominium.

Never at anytime did Riverwalk Investments record any Declaration of Covenants, Easements, and Restrictions for Marina Club of Tampa Building M Condominium, Marina Club of Tampa Building L Condominium, and Marina Club of Tampa Building K Condominium separate from that Declaration of Marina Club of Tampa Condominium (A-I) and no two condominiums may share the same Declaration of Covenants.

In effect, Marina Club of Tampa Homeowner's Association, Inc. is attempting to circumvent the requirements that each individual condominium within a multi-condominium complex have recorded a separate and distinct Declaration of Covenants, Easements, and Restrictions which specifies in clarity the individual covenants, easements, and restrictions between each individual condominium and the developer.

DISCUSSION AND CITATION OF AUTHORITY RELATING TO RTC FORECLOSURE

The obligation of the mortgagor to pay and the right of the mortgagee to foreclose in accordance with the note and mortgage are absolute. Federal Home Loan Mortgage Corp. v. Taylor, 318 So.2d 203 (Fla. 1st DCA 1985). Community Federal Savings and Loan Association v. Orman, 446 So.2d 1129 (Fla. 4th DCA 1984). As a matter of law, the entire indebtedness secured by the mortgage is due and collectible. Van Huss v. Prudential Insurance Company of America, 165 So. 896 (Fla. 1936); Baader v. Walker, 153 So.2d 51 (Fla. 2d DCA 1963), cert. denied, 156 So.2d 858 (1963).

Riverwalk defaulted under the subject note and mortgage by failing to pay the payments due on September 1, 1984, and all subsequent payments. As a result of the default, as of November 16, 1990, the total outstanding indebtedness due to the RTC, as Conservator, on the subject note was \$8,875,092.00, in principal, plus \$6,215,739.18 in accrued interest.

To establish its entitlement to foreclosure upon the subject mortgage, RTC must show: (1) that a valid mortgage was entered into; (2) that the mortgage is in default; (3) that the debt has been properly accelerated; (4) that the mortgage is prior to all other liens on the premises; and, (5) the amount due and owing. See Ernest v. Carter, 368 So.2d 428 (Fla. Dist. Ct. App. 2d 1979).

A mortgage proven of record and recorded according to the law is presumed to have been validly executed and delivered on the date recited in the mortgage. Atlantic Land and Improvement Company vs. Lee, 112 So. 549 (Fla. 1927).

As a matter of law, RTC was entitled to accelerate the amounts due and owing because of the mortgage being in default. An acceleration clause is a legal, valid, and enforceable stipulation. Campbell v. Werner, 232 So.2d 252 (Fla. 3d DCA 1970), No party has claimed that

stipulation. Campbell v. Werner, 232 So.2d 252 (Fla. 3d DCA 1970). No party has claimed that RTC's acceleration of the debt herein at issue was improper.

RTC was also entitled to prevail on the issue of the seniority of its mortgage lien. The owner and holder of a recorded valid mortgage encumbering real property has a lien superior in dignity and right of any lien created by a subsequently recorded mortgage, claim, or lien attaching to the property through the mortgagors, their successors, assigns, and tenants. Bullard v. Fender, 192 So.2d 167 (Fla. 1939); County of Pinellas v. Clearwater Federal Savings and Loan Association, 214 So.2d 525 (Fla. 2d DCA 1968). There cannot be a dispute that RTC's mortgage lien was prior to the other liens encumbering the subject property.

Since the general rule is that a lien filed "first in time" is "first in right," there is no genuine issue of fact as to the priority of RTC's mortgage over the other encumbrances on the subject property. United States v. First Federal Savings and Loan Association of St. Petersburg, 155 So.2d 192 (Fla. 2d DCA 1963); Richardson Tractor Company v. Square Deal Machinery and Supply Co., 149 So.2d 388 (Fla. 2d DCA 1963). There is also no genuine issue of material fact as to the amount due and owing by defendant Riverwalk to RTC on the note and mortgage.

RTC was thus entitled to the entry of a summary judgment of foreclosure as a matter of law and to prevent the impairment of its security. Flagship Bank of Orlando v. Bryan, 384 So.2d. 323 (Fla. 5th DCA 1980); Raskin v. Otten, 273 So.2d 433 (Fla. 3d DCA 1973); Heimer v. Albion Realty & Mortgage, Inc., 300 So.2d 31 (Fla. 3d DCA 1974); \$687.06, Fla. Stat.

On August 31, 1991, The United States District Court did issue the Summary Judgment of Foreclosure, (Appendix: Foreclosure Order)

where at paragraph 11, (App. 4a) Marina Club has been forever foreclosed and barred from ever bringing any claim, lien, or other rights under a Document which was between the Developer Riverwalk and condominium purchasers and recorded subsequent to the mortgage.

COMPELLING REASONS FOR GRANTING WRIT

A federal district court, possessing only that power authorized by Constitution and statute, lacks jurisdiction over a claim for breach of a contract, part of the consideration for which was dismissal of an earlier federal suit. No federal statute makes that connection (if it constitutionally could) the basis for federal court jurisdiction over the contract dispute. Moreover, the doctrine of ancillary jurisdiction does not apply, since the facts to be determined with regard to the alleged breach of contract are quite separate from the facts to be determined in the principal suit, and automatic jurisdiction over such contracts is in no way essential to the conduct of federal court business. Julian v. Central Trust Co., 193 U.S. 93, 113-114, distinguished. If the parties wish to provide for the court's jurisdiction to enforce a dismissal-producing settlement agreement, they can seek to do so. In the event of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2), the court may, in its discretion, make the parties' compliance with the terms of the settlement agreement (or retention of jurisdiction over the agreement) part of its order. When dismissal occurs pursuant to Rule 41(a)(1)(ii), the District Court is empowered (with the consent of the parties) to incorporate the settlement agreement in the order or retain jurisdiction over the settlement contract itself. Absent such action, however, enforcement of the settlement agreement is for state courts, unless there is some independent basis for federal jurisdiction.

Respondent has in their reply (R.Br.Page 9,10) injected the theory that the District Court did have independent "Federal Jurisdiction" because the amount in question exceeds \$75,000. along with diversity of citizenship of the named two parties.

From the litigation record (App.pg. 9a) of the parties it must now be noted that the respondent has maintained an identical action in Florida state courts requesting the same and identical relief as was requested in their federal counter-claim suit with state court jurisdiction obtained over petitioner.

In that state action, first filed January 7, 2002 the respondents did serve a summons (App. Pg 7a) on the petitioner and received jurisdiction of that state claim under F.S.48.071, 48.161, 48.181, and 48.193.

Respondents have filed a total of three amendments to that state action, continuing to maintain petitioners as defendants, the latest of which was filed on October 3, 2005 naming as defendants Abdul Razak (a citizen of Karachi, Pakistan) and six other defendants who are either residents or conducting business within the state of Florida.

In their state action the same identical claims as were presented in that federal counter-claim complaint, and which were supposedly extinguished by this mediation agreement between the petitioner and respondent, (App. Pg 9a) are now active again with additional parties being forced to respond.

REASON FOR GRANTING PETITION

A mediation agreement is to be final and must resolve the issues before the Court and leave no further litigation to be required to consummate the agreement or litigate. Respondent had asked the District Court in their complaint for a quiet title against Abdul Razak, the mortgagee but avoided the

requirement that Razak be named as a defendant and be properly served. Then without granting Razak or the other Florida defendants a right to defend and participate in that mediation and proposed agreement deceived the District Court into believing that petitioner and respondent were the only parties, but as evidenced in the appendix has chosen to simultaneously prosecute identical claims in two forums at the same time. The agreement did not resolve the litigation and required acts that could not be performed by the petitioner without further litigation and the respondent's claims continue in the state court (Appendix State Claims).

The District Court was without "Subject Matter Jurisdiction" over an agreement unless it was as a separate litigation for "Breach of Contract" with "Independent" "Federal Jurisdiction". Obtaining jurisdiction over the petitioner in state court by the respondent served as a waiver of that "Independent Federal Jurisdiction" thus the District Court had no "Independent or Subject Matter Jurisdiction" and that "Final Order" was a ruling in the opposite of all previous rulings of this Supreme Court requiring supervisory control and correction by this Supreme Court and Issuance of that requested Writ of Certiorari vacating the Orders of the lower courts and remanding to the District Court for trial and/or dismissal for lack of jurisdiction.

Respectfully submitted,

/s/ _____
Mohammed Husein Bhadelia
Mohammed Farooq Bhadelia
P.O. Box 290007
Tampa, Florida 33687-0007
(813) 933-7848
Petitioners

Case Number: 05-473

IN THE

Supreme Court of the United States

PETITIONER'S

APPENDIX

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RESOLUTION TRUST CORPORATION,
as Receiver for City Savings Bank, F.S.B.,
Plaintiff,
v. Case No. 90-1090-CIV-T-15C

RIVERWALK INVESTMENTS, INC., a
Florida corporation; et al.,
Defendants.

SUMMARY JUDGMENT OF FORECLOSURE

This cause came before this Court on the motion for summary judgment of foreclosure by plaintiff, Resolution Trust Corporation, as Conservator for City Savings, F.S.B., and the Court having reviewed the file in this cause, considered the moving papers and any papers in opposition thereto, and the Court being otherwise fully advised in the premises, it is thereupon

ORDERED:

1. This Court has jurisdiction of this action pursuant to 28 U.S.C. Section 1345 and 12 U.S.C. Section 1819, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ('FIRREA'), Pub. Law No. 107-73 103 Stat 183. Venue is proper in this district pursuant to 28 U.S.C. Section 1392(b).
2. Plaintiff has established by competent proof the allegations of its Complaint and has established a valid basis to foreclose upon the note and mortgage at issue in this action.
3. Plaintiff is entitled to foreclosure of its mortgage lien and said lien is prior in

date and superior in dignity to the rights, title, interests, claims or demands of the defendants herein, upon the property described in Exhibit "A" attached hereto.

4. Plaintiff is now due the following sums under the note and mortgage at issue herein: \$8,875,092.00 as principal under the note, \$6,215,739.18 as interest accrued through November 16, 1990, plus attorneys' fees of \$16,324.70, and costs of \$2,410.57, making a total sum of \$15,109,566.45, which amount shall bear interest at the rate of 12%, plus court costs now taxed.

5. That unless the total sum of money, with interest at the rate described in paragraph 4 above, found to be due herein and all costs accrued subsequent to this judgment are paid within ten (10) days from the date of this judgment to the RTC or its attorneys, then the property described in Exhibit "A" hereto shall be sold by Special Master, and such Special Master is hereby authorized and directed to sell said property at a Public Sale, after duly and properly publishing notice of sale pursuant to 28 U.S.C. 2002, to the highest bidder for cash, except as set forth below, at the front steps of the United States District Court for the Middle District of Florida, Tampa Division, 611 North Florida Avenue, Tampa, Florida.

6. Immediately after the Special Master closes the bidding at the foreclosure sale, the Special Master shall require the successful bidder (subject to paragraph 8 below if RTC is the high bidder) to post with the Special Master a bid deposit of 20% of the successful bid. The deposit must be in the form of cash or a Cashier's Check. In the event the successful bidder fails to make the required bid deposit, the Special

Master shall immediately resell the property and the same bid deposit requirements shall apply upon the resale. The Special Master shall resell the property using this bid deposit procedure as often as is required to produce a successful bidder above to post the required bid deposit. Upon any resale, the Special Master is instructed to refuse to accept the bid of any person who was the successful bidder at prior sale and failed to make the required bid deposit, unless that bidder demonstrates to the Special Master, at the time of the bid that the bidder has the funds that would be required for the bid deposit if the bid was successful. Bid deposits shall be credited against the sales price. If the successful bidder fails to pay the balance of the sales price by 2:00 p.m. the day of the sale, the Special Master shall renote the sale and pay all costs of the sale from the bid deposit. Any remaining portion of the bid deposit shall be applied toward the Judgment. The Special Master shall announce these bid deposit requirements immediately before the sale.

7. Plaintiff RTC shall advance all subsequent costs of this action and shall be reimbursed for them by the Special Master.

8. Plaintiff RTC may be a bidder for the purchase of the property at the sale. If RTC is the purchaser at the sale, the Special Master shall credit on the bid of RTC the total sum found to be due to RTC, or such portion thereof as may be necessary to pay fully the bid of RTC. No bid deposit shall be required of RTC except to the extent its bid exceeds the credit provided for in this paragraph.

9. After confirmation of the sale, the Special Master shall distribute the proceeds

of the sale, as far as they are sufficient, by paying: first, all of RTC's costs and expenses of these proceedings subsequent to the entry of this Summary Judgment, second, the total sum herein found to be due to RTC plus interest on the total sum herein found to be due at twelve (12%) percent from the date of this Summary Judgment to the date of the issuance of the Special Master's deed herein.

10. If the total sum realized on the sale exceeds the total of the sums ordered to be paid by paragraph 4 of this Summary Judgment, the excess shall be paid into the Registry of the Court to thereafter be disbursed as this Court shall hereafter direct.

11. Upon confirmation of sale, defendants and all persons claiming under or against them since the filing of the Notice of Lis Pendens are forever barred and foreclosed of and from any and all right, title interest, claim or demand of any kind or nature whatsoever, or equity of redemption of, in and to the property described in Exhibit "A" attached hereto and the purchaser at the sale shall be let into immediate possession of such property.

12. That Joseph W. Castello, be, and he hereby is, appointed Special Master in this action to conduct the public sale as is set forth herein, without the requirement of a bond.

13. Jurisdiction of this action is retained to enter such further orders as may be just, proper, and necessary.

DONE AND ORDERED in Chambers at the United States Courthouse, Middle District of Florida, Tampa, Hillsborough County, Florida this day 23rd of August, 1991.

/S/WILLIAM CASTAGNIA
UNITED STATES DISTRICT JUDGE
cc: All Counsel and parties

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RETURN OF SERVICE

State of Florida
County of Hillsborough
Circuit Court Case Number: 02-00307

Plaintiff:
Marina Club of HOA, Inc

vs.

Defendant:
Mohammed Musein Bhadelia, et al

For:
Ronald Cotterill, Esquire
KASS. SHULER, SOLOMON, SPECTOR, FOYLE &
1505 N. Florida Avenue
Tampa, Florida 33602

Received by J. D. Church & Associates on the
11th day of January, 2002 at 6:00 pm to be
served on MOHAMMED HUSEIN BHADELIA 2424 West
Bay Boulevard Unit L-106 Tampa, FL 33607.

I, Frank St. Clair, do hereby affirm that on
the 14th day of January, 2002 at 4:00 pm, I:

Served the within named by attaching a true
copy of the SUMMONS AND COMPLAINT with the
date and hour of service endorsed thereon by
me, to a conspicuous place on the property
described within, having first attempted
service on 01-12-02 at 10:10 AM pursuant to
State Statutes.

Additional Information pertaining to this
Service:

Attempted to Serve; 01-12-02 10:10 AM, 01-12-02 5:00 PM, 01-14-02 8:30AM and 1100AM.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

/s/Frank St.Clair

Frank St Clair

Process Server

J.D. Church & Associates

7408 Commerce Center

Riverview, FL 33569

(813) 672-9492

Our Job Serial Number: 2002000063

**IN THE CIRCUIT COURT OF THE THIRTEENTH
JUDICIAL CIRCUIT OF THE STATE OF FLORIDA. IN
AND FOR HILLSBOROUGH COUNTY
CIVIL DIVISION**

THE MARINA CLUB OF TAMPA HOMEOWNERS
ASSOCIATION INC., a Florida corporation.
Plaintiff.

vs. **CASE NO.: 02-CA-00307
Division J**

ABDUL RAZAK, et al

Defendants.

**FOR LEAVE MOTION TO AMEND COMPLAINT AND TO
FILE PLAINTIFF'S THIRD AMENDED COMPLAINT**

COMES NOW the Plaintiff. The Marina Club of Tampa Homeowners Association. Inc. ("Marina Club"), by and through its undersigned attorneys and pursuant to Florida Rule of Civil Procedure 1.190(a) files this. its Motion for Leave to Amend Complaint and to File Plaintiffs Third Amended Complaint, and states in support thereof as follows:

1. The Second Amended Complaint was filed in this matter on or about March 7, 2003, against Defendants **Mohammed Husein Bhadelia**. Farooq Bhadelia. Dwayne Gillispie and Abdul Razak.
2. Defendant Dwayne Gillispie was dropped as a party by Notice filed on or about April 17, 2003.
3. A Final Judgment was entered by the

United States District Court in that matter styled **Mohammed Husein Bhadelia: et al. v. Marina Club of Tampa Homeowners Association. Inc.; et al., Case No. 8:03-cv1189-T-26TGW** (the "Federal Court action") on or about February 24, 2005. The Final Judgment entered in the Federal Court action quieted title to the subject property' in the Marina Club as against Mohammed Husein Bhadelia.

4. The entry of the Final Judgment in the Federal Court action has made moot some of the issues raised in the Second Amended Complaint as against Defendants Mohammed Husein Bhadelia and Farooq Bhadelia.

5. By Notice of Dropping Parties, dated September 13. 2005. Plaintiff Marina Club has dropped Defendants **Mohammed Husein Bhadelia** and Farooq Bhadelia.

6. Other events which have occurred subsequent to the filing of the Second Amended Complaint have required that additional issues he raised against Defendant Abdul Razak and that a cause of action to quiet title be stated against proposed Defendants Rob Turner, Doug Belden and certain holders of tax certificates as to the Subject Property.

7. The action is not at issue and is not set for trial so that allowing the amendment will not delay these proceedings nor cause any prejudice to the Defendants.

8. A copy of the proposed Third Amended Complaint is attached hereto as Exhibit "A".

WHEREFORE, Marina Club prays this Court enter an Order:

1. Permitting it to file a Third Amended Complaint in this action and
2. Granting such other relief as this Court deems necessary and proper.

/s/

SUSAN K. SPURGEON. ESQ..
Florida Bar No. 478229
PENNINGTON. MOORE. WILKINSON, BELL
& DUNBAR, P.A.
2701 N. Rocky Point Drive, Suite 930
Tampa. Florida 33607
Phone: (813) 639-9599
Dated: October 3, 2005

IN THE CIRCUIT COURT OF THE THIRTEENTH
JUDICIAL CIRCUIT OF THE STATE OF FLORIDA. IN
AND FOR HILLSBOROUGH COUNTY
CIVIL DIVISION

THE MARINA CLUB OF TAMPA HOMEOWNERS
ASSOCIATION, INC., a Florida corporation.

Plaintiff,
vs.
CASE NO.: 02-CA-000307
Division J

ABDUL RAZAK; ROB TURNER, PROPERTY
APPRAYER OF HILLSBOROUGH COUNTY.
FLORIDA; AND DOUG BELDEN, TAX COLLECTOR
OF HILLSBOROUGH COUNTY. FLORIDA.
WACHOVIA-COLLECTION AGENT FOR SASS
MUNI-IV, LLC; HEARTWOOD 14, LLC;
CATHERINE III LLC: and MTAG FOR COLORADO A
MGT LLC,
Defendants.

THIRD AMENDED COMPLAINT TO QUIET TITLE

COMES NOW the Plaintiff, THE MARINA CLUB OF
TAMPA HOMEOWNERS' ASSOCIATION. INC. ("MARINA
CLUB") by and through its undersigned
attorneys, and sues the Defendants, ABDUL
RAZAK ('RAZAK'); ROB TURNER. Property
Appraiser of Hillsborough County, Florida
('ROB TURNER'); and DOUG BELDEN, Tax
Collector of Hillsborough County, Florida
('DOUG BELDEN'); WACHOVIA-COLLECTION AGENT
FOR SASS MUNI-IV, LLC: HEARTWOOD 14. LLC;
CATHERINE III LLC: and MTAG FOR COLORADO A
MGT LLC and states in support thereof as
follows:

JURISDICTION AND VENUE

1. This is an action to quiet title. This Court has jurisdiction of the subject matter pursuant to **Florida Statutes Chapter 65**.
2. The property which is the subject of this action is legally described in attached Exhibit 1. and is referred to hereafter as the 'Subject Property'.
3. Plaintiff. MARINA CLUB. is a not for profit Florida corporation, with its principal place of business in Tampa. Hillsborough County. Florida.
4. Defendant **RAZAK**. on information and belief, is a **citizen of Pakistan** whose last known address is do 6001 Beach Road. Number 19-06 Golden Rule Tower. Singapore 199589.
5. Defendant **RAZAK** is subject to the jurisdiction of the courts of this State pursuant to **Florida Statutes § 48.193(1)(c)** in that he claims to own and/or hold a mortgage on the Subject Property.
6. Defendant ROB TURNER is the Property Appraiser for Hillsborough County, Florida.
7. Defendant, DOUG BELDEN, is the Tax Collector for Hillsborough County. Florida.
8. Defendant, WACHOVIA-COLLECTION AGENT FOR SASS MUNI-IV, LLC, is an inactive Foreign Limited Liability company with its last known address at 123 South Broad Street, **Philadelphia, Pennsylvania** 19109.
9. Defendant. HEARTWOOD 14 LLC, is a Florida Limited Liability company with its principal place of business in Fort Lauderdale. Florida.
10. Defendant. Catherine III LLC. a Limited Liability company in the State of Florida c/o Gulf Group Holdings Acquisitions & Applications. Inc., a Florida corporation, with its principal place of business in

Miami, Florida.

11. Defendant. MTAG FOR COLORADO A MGT LLC. is a Florida Limited Liability company with its principal place of business in Ft. Lauderdale. Florida.

12. The Subject Property is located in Tampa, Hillsborough County, Florida. and venue is proper in Hillsborough County.

DERAIGNMENT OF TITLE

13. On December 16. 1982. Riverwalk. LTD.. a Florida Limited Partnership by Riviera Associates. LTD., a Florida Limited Partnership and its general partner. Riv Corp.. a Florida corporation ("Riverwalk LTD"). as developer, recorded the First Amendment and First Supplemental Declaration of Covenants,. Restrictions and Easements (the 'Declaration of Covenants') in Official Record Book 4239 Page 484 of the Public Records of Hillsborough County, Florida. The Declaration of Covenants subjected the property owned by Riverwalk Ltd. including the Subject Property to the covenants, restrictions and easements set forth therein. A copy of the Declaration of Covenants is attached to the Amended Complaint as Exhibit "A" and to the Second Amended Complaint as Exhibit "A'. It is incorporated by reference as though attached hereto.

14. The Joinder and Consent of the mortgagees, including City Federal Savings and Loan Association, was attached to the Declaration of Covenants.

15. Article IV. Section 8 of the Declaration of Covenants provides: When titles to all Dwelling Units located upon the Complex Lands have been conveyed to non-Declarant purchasers, or on December 31.

1992, whichever occurs first, or sooner at the Declarant's option. the Declarant shall convey to the Association, by quitclaim deed or deeds, the fee simple title to the Committed Common Properties and such additional Common Properties as have then been committed for the use and benefit of Owners pursuant to the terms of this Declaration; which title shall be free and clear of any liens but subject to:

(1) any real estate taxes and assessments for the year in which the Common Properties are transferred;

(2) any covenants, Conditions, restrictions, reservations, limitations and easements then of record; and

(3) any zoning ordinances then applicable.

16. The 'Association' as referred to in Article IV, Section 8 of the Declaration of Covenants quoted above is defined by Article I, Section 3 to mean the Plaintiff, Marina Club.

17. Article I. Section 8 of the Declaration of Covenants, defines the Committed Common Properties as those portions of The Marina Club of Tampa's Complex Lands designated by the Declarant and committed for Improvements and use as depicted on Exhibit "E" to the Declaration of Covenants.

18. The extent of the property included in the Committed Common Properties and the "additional Common Properties as have then been committed for the use and benefit of Owners" thus owned by MARINA CLUB was not clearly depicted in said Exhibit "E" to the Declaration of Covenants. Exhibit E appears to include that all of the property owned by Riverwalk LTD, save that planned to be submitted to condominium ownership.

19. On November 30, 1983, Riverwalk LTD recorded an instrument styled Amendment to First Amendment and First Supplemental Declaration of Covenants, Restrictions and Easements for The Marina Club of Tampa ("Amendment to Declaration of Covenants"). The Amendment to Declaration of Covenants was recorded at Official Record Book 4652 Page 897 of the Public Records of Hillsborough County, Florida. The Amendment to Declaration of Covenants had as its stated purpose amending Exhibit "E" for the purpose of adding a legal description and correcting the erroneous building designations contained in the site plan drawings. The legal description added by the Amendment to Declaration of Covenants as that of the Subject Property and other lands which subsequently have been committed to condominium form of ownership. Thus in accordance with the Amendment to Declaration of Covenants it appears that all property owned by Riverwalk Ltd was Committed Common Property. A copy of the Amendment to the Declaration of Covenants is attached as Exhibit 2 and is incorporated by reference.

20. On September 23, 1985, Riverwalk LTD conveyed it's interest in the property it owned including all or part of the Subject Property to Riverwalk Investments, Inc. Riverwalk Investment, Inc. was a wholly owned subsidiary of City Federal Savings Bank. The deed from Riverwalk LTD to Riverwalk Investments, Inc. was recorded at Official Record Book 4666 Page 1399 of the Public Records of Hillsborough County, Florida. A copy of this deed is attached to the Amended Complaint as Exhibit "C" and to the Second Amended Complaint as Exhibit "C". It is incorporated by reference as though attached hereto.

21. In December 1989, the Resolution Trust Corporation ("RTC") was appointed as receiver for City Federal Savings Bank. The RTC instituted a foreclosure action against Riverwalk Investments, Inc. as to the property subject to its mortgage.

22. On January 7, 1993 the RTC, as receiver for City Federal Savings Bank, sold the property foreclosed to Mohammed Husein Bhadelia. The Special Warranty Deed from RTC to Mohammed Husein Bhadelia was recorded at Official Record Book 6850 Page 1705 of the Public Records of Hillsborough County, Florida (the "Special Warranty Deed"). A copy of the Special Warranty Deed is attached to the Amended Complaint as Exhibit "E" and to the Second Amended Complaint as Exhibit "E". It is incorporated by reference as though attached hereto.

23. On or about **January 7, 2002**, MARINA CLUB instituted this action to quiet title to the Subject Property and obtain other relief. On or about **June 24, 2002**, MARINA CLUB filed its Notice of Lis Pendens which was recorded at Official Record Book 11732 Page 1108 of the Public Records of Hillsborough County. MARINA CLUB'S Notice of Lis Pendens attached the legal description contained in the Special Warranty Deed. A copy of the Lis Pendens is attached hereto as Exhibit 3 and incorporated herein by reference.

24. On or about **October 14, 2003**, Plaintiff MARINA CLUB, instituted a Counterclaim to quiet title to the Subject Property in the action styled **Mohammed Husein Bhadelia: et al.. Plaintiffs. v. Marina Club of Tampa HOA. Inc.. Defendant; Case No. 8:03-cv-1189-T-26TGW (the "Federal Court action")**, pending in the United States District Court, Middle District of Florida, Tampa Division.

In its Counterclaim to quiet title, MARINA CLUB claimed title to the Subject Property pursuant to the duty of Riverwalk LTD and its successors to convey title to the Committed Common Properties to MARINA CLUB on or before December 31, 1992.

25. On or about **October 16, 2003**, MARINA CLUB recorded its Notice of Lis Pendens as to its Counterclaim in the Federal Court action. This Notice of Lis Pendens was recorded in Official Record Book 13219 Page 206 of the Public Records of Hillsborough County, Florida. The legal description attached to this Notice of Lis Pendens likewise utilized the legal description included in the Special Warranty Deed. A copy of this Lis Pendens is attached as Exhibit 4 and incorporated herein by reference.

26. During the Federal Court action the parties were ordered to mediation. At mediation, the parties entered into a Mediated Settlement Agreement (the "MSA"). In the MSA, the parties agreed to entry of a Final Judgment quieting title as to the property described in the Special Warranty Deed. Pursuant to the MSA, title to the Subject Property was to be quieted in the Marina Club. Title to property known as the "Building N Property" and Units L106 and A112 was to be quieted in Mohamed Hussein Bhadelia. (The balance of the property described in the Special Warranty Deed consisted of condominium units which Bhadelia had sold subsequent to obtaining the Special Warranty Deed.)

27. On **February 24, 2005**, United States District Judge Richard Lazzara entered **Final Judgment** in the Federal Court action, **enforcing the MSA** and quieting title to the Subject Property in MARINA CLUB. A copy of

the Final Judgment (with the MSA attached as Exhibit 1 thereto) was recorded at Official Record Book 15500, Page 1223 of the Public Records of Hillsborough County the Final Judgment ("Final Judgment") A copy of the Final Judgment is attached as Exhibit 5 and incorporated herein by reference.

28. The Final Judgment was appealed by Mohammed Husein Bhadelia to the U.S. Court of Appeals 11 Circuit. The 11th Circuit affirmed the Final Judgment by its Judgment entered **July 27, 2005**. The Mandate of the 11th Circuit was issued **August 31, 2005**.

COUNT I - TO QUIET TITLE AS TO ABDUL RAZAK

Plaintiff realleges and reaffirms paragraphs 1 through 28 above as if restated herein in their entirety.

DERAIGNMENT OF TITLE AS TO DEFENDANT RAZAK

Razak Mortgage

30. Defendant, RAZAK, may claim an interest in the Subject Property by virtue of that certain mortgage dated May 30, 1994 and recorded in Official Record Book 7430, at Page 145 of the Public Records of Hillsborough County, Florida (the "Razak Mortgage"). A copy of the Razak Mortgage is attached hereto and incorporated herein by reference as Exhibit 6.

31. RAZAK'S claim to the Subject Property emanating from the Razak Mortgage is void in that it is dependent upon the title of Mohammed Husein Bhadelia. In accordance with the Final Judgment entered in the Federal Court action, title to the Subject Property was quieted in the MARINA CLUB and against the claims of Mohammed Husein Bhadelia.

Since Mohammed Husein Bhadelia did not hold title at the time the Razak Mortgage was granted (or subsequently) the lien of the Razak Mortgage never attached to the Subject Property.

32. Further, RAZAK'S claims as to the Subject Property pursuant to the above described Mortgage are inferior to and subject to the claims of the MARINA CLUB in that the MARINA CLUB derives its title from the Declaration of Covenants, which were recorded prior to the Razak Mortgage. The grant of mortgage by Mohammed Husein Bhadelia to RAZAK came after **December 31, 1992**, the date on which title to the Subject Property was to vest in the MARINA CLUB in accordance with Article IV, Section 8 of the Declaration of Covenants.

33. Further, any lien of the Razak Mortgage terminated, pursuant to Florida Statutes 95.281(1)(a), five years after it matured. As shown by the terms of the Razak Mortgage, it matured on May 30, 1999. Therefore, the lien of the mortgage terminated on May 30, 2004. (See American Bankers Life v. 2275 West Corporation, 905 So.2d 189 (Fla. 3 DCA 2005))

Deed in Lieu to Razak

34. Further, Defendant RAZAK may claim an interest in the Subject Property by virtue of that certain Deed in Lieu of Foreclosure dated August 11, 2005 granted by Mohammed Husein Bhadelia and recorded at Official Record Book 15379 Page 0967 of the Public Records of Hillsborough County, Florida (the 'Deed in Lieu'). A copy of the Deed in Lieu is attached hereto as Exhibit 7 and incorporated by reference herein.

35. RAZAK'S claim to the Subject Property

emanating from the Deed in Lieu is void in that it is dependent upon the title of Mohammed Husein Bhadelia. In accordance with the Final Judgment entered in the Federal Court action, title to the Subject Property was quieted in the MARINA CLUB and against the claims of Mohammed Husein Bhadelia.

36. Further, the Deed in Lieu was placed of record subsequent to the recording of the Lis Pendens in this action and in the Federal Court action. In accordance with Florida Statutes 48.23(1)(b) RAZAK'S claim to the Subject Property emanating from the Deed in Lieu is void.

37. Further, RAZAK'S claim to the Subject Property emanating from the Deed in Lieu is void in that it is not supported by consideration. The Deed in Lieu is granted in satisfaction of the Razak Mortgage. In accordance with Florida Statutes § 95.281(1 a) the lien of the Razak Mortgage terminated on **Nov 30, 2004** and therefore is not longer consideration for the conveyance.

WHEREFORE, the Plaintiff MARINA CLUB prays this Court enter an Order:

A. Quieting title to the Subject Property in the MARINA CLUB and against any and all claims of ABDUL RAZAK; and

B. Granting such other relief as this Court deems proper.

**COUNT II- ACTION TO QUIET TITLE AS TO THE
LIEN OF AD VALOREM PROPERTY TAXES**

38. Plaintiff realleges and reaffirms paragraphs 1 through 28 above as if restated herein in their entirety.

39. Defendants ROB TURNER and DOUG BELDEN. as the Property Tax Appraiser and Property

Tax Collector, respectively, have asserted a lien for ad valorem property taxes against the Subject Property. They have identified the Subject Property as Folios 17706 1-0000 and 177241-0000.

40. ROB TURNER, as Property Tax Appraiser, has assessed the Subject Property at its market value based on his mistaken belief that the subject property was owned by Mohammed Husein Bhadelia.

41. The Property Tax Collector has issued and sold tax certificates for delinquent taxes assessed on the Subject Property as follows: Printouts from the Hillsborough County Tax Collector as of 09/13/2005 are attached as Exhibit 8 and incorporated by reference herein.

42. Defendant, WACHOVIA-COLLECTION AGENT FOR SASS MUNI-IV, LLC, is the holder of tax certificate number 93642 for the tax year 2003 on Folio 17724 1-0000.

43. Defendant, HEARTWOOD 14 LLC, is the holder of a tax certificate number 110186 for the tax year 2004 on Folio 17724 1-0000.

44. Defendant, Catherine III LLC, is the holder of tax certificate number 93633 for the tax year 2003 on Folio 17706 1-0000.

45. Defendant, MTAG FOR COLORADO A MGT LLC, is the holder of tax certificate number 110176 for the tax year 2004 on Folio 177061-0000.

46. **In accordance with the Final Judgment entered in the Federal Court action, title to the Subject Property has been quieted in the MARINA CLUB which is a homeowners association charged with ownership and maintenance of the common areas of the Marina Club of Tampa. In accordance with Florida Statutes § 193.0235, the assessment of ad valorem taxes against the Subject Property was improper in that it constitutes**

common elements of the Marina Club of Tampa.
47. Pursuant to Rule 12D-8.021(2) Florida Administrative Code, ROB TURNER has a duty to correct the assessment in accordance with Florida Statutes § 193.023(5).

48. Pursuant to Florida Statutes § 197.443 and Rule 12D-13.009. DOUG BELDEN has a duty to void the tax certificates issued and sold for tax years 2003 and 2004 as to Folio 177061-0000 and 177041-0000. and make refunds available to the purchasers of said tax certificates.

49. Accordingly the Subject Property must be devalued by the Property Tax Appraiser and the lien for ad valorem property taxes asserted by the Property Tax Collector must be voided. Bankunited Financial Corp. v. Markham, 763 So.2d 1072 (Fla. 4 DCA 1999).

WHEREFORE, MARINA CLUB prays this Court enter an Order:

A. Quieting title in the MARINA CLUB as to the Subject Property and declaring void the lien for ad valorem taxes against the Subject Property;

B. Voiding tax certificates #642, 110186. 93633. and 110176: and

C. Granting such other relief as this Court deems necessary and proper.

Respectfully submitted on this 3rd day of October, 2005.

/s/ Susan K. Spurgeon

SUSAN K. SPURGEON ESQ.,

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